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No. 02-977

Supreme Court, U.S.
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In The

Supreme Court of the United States

BRIDGESTONE CORPORATION,

Petitioner,

vs.

T & T TRUCK & CRANE SERVICE, INC., KENAI DRILLING, LTD., and GENE COKER,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of The State Of California, For The Second Appellate District, Division Three

RESPONDENTS' SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT PURSUANT TO RULE 29.6

Respondent Kenai Drilling Limited has no parent corporation, and no publicly held company owns 10% or more of its stock. Respondent T & T Truck & Crane Service has no parent corporation, and no publicly held company owns 10% or more of its stock.

RESPONDENTS' SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SECTION 551 OF TITLE 49 OF THE CODE OF FEDERAL REGULATIONS, REQUIRING DESIGNATION OF AN AGENT FOR SERVICE OF PROCESS, REMAINS VALID LAW

While the Petitioner's Reply indicates that 49 C.F.R. §551, regarding service of process on foreign manufacturers pursuant to the National Traffic and Motor Vehicle Safety Act of 1966, cited in Respondents' Opposition at page 9, was repealed a decade ago, the statute that was actually repealed by Public Law 103-272, cited by Petitioner at page 5 of the Reply, was 15 U.S.C. §1399 (1994), which also relates to the designation of an agent for service of process under the foregoing Act. What Petitioner neglected to advise in the Reply is that, at the time 15 U.S.C. §1399 was repealed, 49 U.S.C. §30164 (1994), which essentially codified the laws set forth 15 U.S.C. §1399 and 49 C.F.R. §551.45, was simultaneously enacted.

In *U.S. v. Chrysler Corp.*, 995 F.Supp. 150, 152 fn1 (D.D.C., 1998), the Court stated as follows with regard to the legislative history associated with the repeal effected by Public Law 103-272, §7(b), 108 Stat. 1379 (July 5, 1994) as to the National Highway Traffic and Motor Vehicle Safety Act of 1966:

> This statute was originally codified at 15 U.S.C. § 1381 et seq. On July 5, 1994, the statute was repealed, and Congress contemporaneously enacted 49 U.S.C. § 30101 et seq. (1994), which has the exact same stated purpose as the 1966 Act. Pub.L. No. 103-272, § 7(b), 108 Stat. 1379 (1994). Congress sought to clarify ambiguities in

> the 1966 Act "without substantive change." H.R.Rep. No. 103-180, at 1, (1993), reprinted in 1994 U.S.C.C.A.N. 818, 819-20.

While the opinion in *U.S. v. Chrysler Corp.* was reversed, this recitation of the legislative history surrounding the repeal of various provisions of the National Highway Traffic and Motor Vehicle Safety Act of 1966 remains correct.

The following excerpt concerning other revisions to federal laws concerning transportation is also illustrative of the fact that the referenced repeal has no bearing on the requirements of 49 C.F.R. §551:

> [T]he recodification of the FRSA was part of its recodification of all "laws related to transportation in one comprehensive title." H.R.Rep. No. 108, 103d Cong., 2d Sess. 3 (1994), reprinted in 1994 U.S.C.C.A.N. 818, 820. While the 1994 recodification resulted in certain minor modifications in the language of the FRSA, the modifications did not result in substantive changes to the law. The language modifications were done merely for the purpose of promoting clarity and consistency. Id. ("In making changes in the language, precautions [were] taken against making substantive changes in the law.").

O'Bannon v. Union Pacific R. Co., 960 F.Supp. 1411, 1416 fn3 (1997).

Regarding the repeal of 15 U.S.C. §1399, the Historical and Statutory Notes to 15 U.S.C.A. §1399 state:

> Section 1399, Pub.L. 89-563, Title I, § 110, Sept. 9, 1966, 80 Stat. 723; Pub.L. 93-492, Title I, §§ 102(b)(2), 103(c), Oct. 27, 1974, 88 Stat. 1477,

> 1478, related to jurisdiction of United States district courts for injunctive relief for violations of this subchapter and related acts, trial by court or by jury in criminal contempt proceedings for violations of such injunctions, venue, subpoenas, and designation of agent for service of process. See sections 30163 through 30165 of Title 49.

The statute in which the subject laws were recodified, 49 U.S.C. §30164 (2003), provides in pertinent part as follows:

> § 30164. Service of process
>
> (a) Designating agents. – A manufacturer offering a motor vehicle or motor vehicle equipment for import shall designate an agent on whom service of notices and process in administrative and judicial proceedings may be made. The designation shall be in writing and filed with the Secretary of Transportation. The designation may be changed in the same way as originally made.
>
> (b) Service. – An agent may be served at the agent's office or usual place of residence. Service on the agent is deemed to be service on the manufacturer. If a manufacturer does not designate an agent, service may be made by posting the notice or process in the office of the Secretary.

The legislative history for §30164 indicates "Added Pub.L. 103-272, § 1(e), July 5, 1994, 108 Stat. 968."

Finally, the title of 49 C.F.R. §551.45 (2003) states: "Code of Federal Regulations Title 49 – Transportation Subtitle B – Other Regulations Relating to Transportation Chapter V – National Highway Traffic Safety Administration, Department of Transportation Part 551 – Procedural

Rules Subpart D – Service of Process; Agents." Thus, there can be no question that the regulation noted in Respondents' Opposition is presently valid law.

Dated: February 24, 2003

Respectfully submitted,

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